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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

ALLEN E. BURNS, et al.,

Plaintiffs,

Civ. No. 03-3021-HO (lead)

v.

MBK PARTNERSHIP, et al.,

Defendants,

CONSENT DECREE

v.

DANIEL J. SILVER, Receiver-nominee,

Intervener.

## **I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed claims in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the North Ridge Estates Superfund Site Klamath Falls, Oregon ("the Site").

B. The parties to this Consent Decree ("Parties") do not admit any liability to the United States arising out of the transactions or occurrences alleged in the complaint. Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by Settling Defendants.

C. For purposes of this Consent Decree, the Parties other than the United States and the Intervener are divided into two groups; Settling Defendants and Settling Homeowners. Settling Defendants and Settling Homeowners are collectively referred to in this Consent Decree as the "Settling Parties." Settling Defendants will pay Settling Homeowners funds sufficient to resolve Settling Homeowners' claims against Settling Defendants as these two groups of Settling Parties have previously agreed among themselves and others in a Global Settlement Agreement dated August 11, 2005, as amended (the "GSA"). The Court has been presented with a separate motion for approval of the GSA and entry of an order incorporating the terms of the GSA. The United States is not a party to the GSA, nor is the receiver (the "Receiver") appointed pursuant to this Consent Decree.

D. The United States has reviewed the Financial Information (as defined below) submitted by Settling Defendants to determine whether Settling Defendants are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendants are able to pay the amounts specified in Section V.

E. Upon receipt of certain payments as provided in the GSA, Settling Homeowners (except Richard Gibson and Susan D. Gibson) shall transfer their affected real properties, in the manner specified in this Consent Decree, to the Receiver. Settling Defendant MBK Partnership (together with its wholly owned subsidiary, North Estates LLC, collectively referred to herein as "MBK"), consistent with the GSA, shall also transfer affected real properties to the Receiver upon consummation of the GSA and as provided herein. MBK is a debtor and debtor-in-possession in a chapter 11 bankruptcy, case no. 04-69814 (the "Bankruptcy Case"), now pending in the United States Bankruptcy Court for the District of Oregon (the "Bankruptcy Court"). Accordingly, provided that the Bankruptcy Case has not been dismissed, it will be necessary for MBK to secure Bankruptcy Court approval for such transfers.

F. Settling Defendants shall also cause funds to be paid to EPA in the amount specified in Paragraph 4 below, which, in combination with the payment by the Settling Federal Agencies, EPA projects will be sufficient to complete a remedial investigation/feasibility study ("RI/FS") for the Site. The obligation to pay such funds to EPA arose from Unilateral Administrative Orders issued by EPA on March 15, 2005 and April 12, 2005 (collectively, the "UAO") to Settling Defendants Stewarts, Tuttle and Bercot. The Receiver shall maintain all properties (collectively, the "Properties" and each a "Property") transferred to the Receiver

pursuant to the GSA and this Consent Decree until such time as he may transfer the Properties in a manner consistent with this Consent Decree. The Receiver shall attempt to negotiate one or more agreements with third parties to: 1) implement environmental response action selected by EPA; while 2) redeveloping the Site in whole or in part. The Receiver may transfer to such third parties all or any portion of the Properties as the Receiver may deem appropriate, subject to approval by EPA and this Court. Proceeds, if any, from the transfer of any Property shall be distributed as provided herein.

G. When the Site was redeveloped from a former college campus (and prior to that, a military recuperational facility) to private housing, asbestos containing material (“ACM”) was not properly disposed of, or was otherwise buried in place, and subsequently surfaced creating substantial human health risks for exposed individuals. In addition to removing substantial quantities of such ACM, EPA temporarily relocated Settling Homeowners during the dry summer season of 2005 when the risks from asbestos fibers were greatest.

H. The Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction

over all Settling Parties. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Parties and the Receiver shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

### **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States, and upon the Receiver and the Settling Parties and their respective heirs, successors and assigns. Any change in ownership or corporate or other legal status of any Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status, rights, obligations or responsibilities of any Settling Party under this Consent Decree.

### **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Financial Information" shall mean shall mean the documentation identified in Appendix B, which was submitted to the United States by Bercot, by Melvin L. Stewart and M.L. Stewart, and by Tuttle pursuant to the Stipulation and Order Protecting Confidential Business and Financial Information, signed by the United States and others, entered by the Court on April 13, 2005, which remains in effect. The submitted Financial Information details the then-current financial status of each of those Settling Defendants.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "Matters Addressed" means all Remedial Action, Removal, and Response Costs and all response actions taken or to be taken related to the Site as these terms are defined

herein or as defined in 42 U.S.C. § 9601.

j. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

k. "Parties" shall mean the United States, the Settling Parties, and the Receiver.

l. "Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the United States has paid or subsequently pays at or in connection with the Site, plus accrued Interest on all such costs.

m. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

n. "Settling Defendants" shall mean Settling Defendants MBK Partnership, an Oregon general partnership, Melvin L. Stewart and Mary Lou Stewart (the "Stewarts"), Lisa M. Stewart, Maurice E. Bercot ("Bercot"), Kenneth L. Tuttle, individually and as Trustee of the Kenneth L. Tuttle M.D., P.C. Employee Pension and Profit Sharing Plan and Trust for Kenneth L. Tuttle, Kenneth L. Tuttle, M.D., P.C., and the Kenneth L. Tuttle M.D. P.C. Employee Pension and Profit Sharing Plan and Trust for Kenneth L. Tuttle M.D. P.C. (collectively, "Tuttle"), M. L. Stewart, Inc., an Oregon Corporation ("M. L. Stewart"), Claire Engelberg, individually and sued herein as Personal Representative, surviving spouse and successor in interest of Nathan Engelberg , and their heirs and successors ("Engelberg") (although Engelberg, in entering into this Consent Decree, does not consent to the jurisdiction of any state court in the State of Oregon), and Jerome Kaufman and his heirs and successors ("Kaufman").

o. "Settling Homeowners" shall mean Settling Homeowners Allen E. Burns, Joann A. Burns, Ron J. Villa, Jessica J. Villa, Jeffrey A. Devish, Staci M. Devish, James David Selim, Karen Wilson Selim, Michael A. Cornachione, Harriet S. Cornachione, Michael S. Homfeldt, Sophia A. Homfeldt, Kelley R. Mingus, Angelina A. Mingus, Dennis E. Winn, Carolyn R. Winn, Daniel B. Stearns, Shaw Nee Stearns, Richard Gibson, Susan D. Gibson, Andrew E. Peterson, Rebecca L. Peterson, Kil Nam Lee, Estate of Yoon C. Lee, Jenny M. Walle, and Neil M. Walle, Carl Jeffrey Gurske, Laurie Ann Gurske, William H. Hawthorne, Staci L. Hawthorne, Daniel William Graham, Tracie Rene' Graham, Derek Micka, Stacie Micka, Ernest Wade Dykstra and April Lynn Dykstra.

p. "Settling Federal Agencies" shall mean the United States Department of the Navy, the United States Department of Defense, the United States Department of Health and Human Services, the United States Department of Education, and the General Services Administration.

q. "Settling Parties" shall mean the Settling Defendants and Settling Homeowners.

r. "Site" shall mean the geographic area formerly known as the Marine Recouperational Barracks, encompassing approximately 784 acres, including the area formerly known as the Rifle Range, encompassing approximately 45 acres, located in Klamath Falls, Oregon, and which now includes the residential housing development known as "North Ridge Estates," also now known as the "North Ridge Estates Superfund Site." The legal description of the "Site" is attached to this Consent Decree as Appendix A.



s. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities, which includes without limitation EPA, the Settling Federal Agencies and any federal natural resources trustee.

t. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any "hazardous substance" under Oregon Revised Statute 465.200(16); or (5) any "hazardous material" under Oregon Revised Statute 466.605(7).

#### **V. PAYMENT OF RESPONSE COSTS**

4. Within 30 days of entry of this Consent Decree, Settling Defendants shall cause \$433,333 to be paid to EPA. In addition, within 30 days of entry of this Consent Decree, Bercot, Stewart and Tuttle shall direct the transfer to EPA of all remaining funds in the escrow account established pursuant to the UAO. These payments, in conjunction with the payment on behalf of the Settling Federal Agencies in accordance with Paragraph 7 below, represent the outstanding balance on \$2,500,000 required to be deposited in the above-referenced escrow account to secure environmental investigation and study procedures described in the UAO. Within 30 days of entry of this Consent Decree, Settling Defendants shall also cause to be paid the sum of \$100,000 to the Receiver.

5. Payment by, or on behalf of, Settling Defendants to EPA shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Oregon following lodging of the Consent

Decree. Payment to the Receiver shall be by certified cashier's check and in accordance with further payment instructions to be supplied by the Receiver to the Settling Defendants within 7 days after entry of this Consent Decree.

6. At the time of each payment required by Paragraph 4 above, Settling Defendants shall also send, or cause to be sent, notice that payment has been made to EPA and DOJ in accordance with Section XV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill Identification Number 10BT, DOJ case number 90-11-6-17135, and the civil action number.

7. As soon as reasonably practicable after the date of entry of this Consent Decree, the United States, on behalf of Settling Federal Agencies, shall:

a. Pay to the EPA \$ 400,000, in reimbursement of Response Costs.

b. If the payment to EPA required by Paragraph 7(a) is not made as soon as reasonably practicable, the EPA Region X Director of the Office of Environmental Cleanup or his/her Deputy, or the Regional Counsel may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section or his/her supervisors. In any event, if this payment is not made within 120 days after the date of entry of this Consent Decree, EPA and DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998.

c. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal

Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

## **VI. RECEIVER**

8. Upon nomination of the United States and the Settling Parties, the Court hereby appoints Daniel J. Silver as Receiver of the transferred properties from the Settling Homeowners and MBK for the purposes set forth in Paragraph 11 of this Consent Decree. For all purposes, the Receiver is the “Liquidating Entity” specified in the GSA, and shall be entitled to all benefits due or for the “Liquidating Entity” in the GSA, including, but not limited to, all releases of liability of the Liquidating Entity obtained by some or all of the Settling Defendants from those owners of real property at the Site who are not Parties to this Consent Decree.

9. In managing the Site, the Receiver is acting on behalf of this Court and is entitled to immunity from suit in his personal capacity when acting within the scope of his authority.

10. The Receiver is not a fiduciary with respect to any party other than EPA.

11. In the performance of his duties, the Receiver shall pursue the following objectives, with the recognition that they may not be achievable in whole or in part:

a. The Receiver shall manage the properties conveyed pursuant to this Consent Decree in a manner consistent with response actions taken, to be taken, or otherwise required by EPA, including compliance with all directions or requests by EPA, subject to appeal to this Court.

b. To the extent practicable and subject to subparagraph a. of this Paragraph, the Receiver shall manage assets under his control to preserve their value and to generate revenue through the sale, lease, rental, or other use; provided however, that the Receiver has no

legal obligation to EPA, any other Party to this Consent Decree, or any other person or entity to generate revenue or profits through the sale, lease, rental, or other use of these assets. The Receiver shall take no action to generate revenue or profits if EPA advises him that such action would be contrary to the objectives of subparagraph a. of this Paragraph.

c. The Receiver is authorized to make expenditures from the assets of the Receivership in order to carry out the functions of Receiver, including, but not limited to, property management, security, insurance and negotiation of property transfers and/or cleanup.

d. The Receiver shall not make expenditures, or utilize credit for purchases, over \$1,000 without prior written approval from EPA.

e. The Receiver shall not engage in real property transactions regarding the Site, or directly or indirectly agree to or allow the creation, incurrence or assumption of any lien with respect to the Site or any other assets of the Receivership, without prior written approval from EPA.

f. The Receiver shall not loan any funds or any asset, or guarantee in any manner the debt of any other person or individual, without prior written approval from EPA.

12. Compensation shall be fixed by agreement between the receiver and EPA at EPA's unreviewable discretion.

13. The Receiver is managing property which may have the potential to expose people and the environment to asbestos and other hazardous substances. The Receiver has limited financial resources with which to manage the Site. Accordingly, the Court orders the Receiver to comply with the instructions of EPA with respect to preventing or limiting exposure to asbestos or other hazardous substances. The Receiver shall not be responsible for making any

determinations regarding any risks to human health, or for taking any actions to abate, reduce, minimize, or otherwise avoid those risks, except as directed or requested by EPA. If the Receiver is unable to comply with EPA's instructions with the financial or other resources available to him, he shall apply to the Court for further guidance.

14. Upon any sale of Property transferred to the Receiver, the net proceeds thereof shall be applied first to reimburse the expenses of the Receiver, and second, to EPA for implementation of response actions at the Site. If any sale proceeds remain after all EPA response actions have been completed and the expenses of the Receiver have been paid and reimbursed, the balance shall be distributed (a) to the extent that they have not already received an amount equal to 100% of the July 2005 PGP Appraisal value of their Property (not including their share of net earnings accrued by the Settlement Fund prior to distribution), *pro rata* to Settling Homeowners who transferred Property to the Receiver; (b) next, to the State of Oregon for reimbursement of its expenses incurred in connection with the discovery, investigation and removal of hazardous substances at the Site; (c) then, to EPA for unreimbursed response costs; and (d) thereafter, *pro rata*, to the holders of unsatisfied allowed unsecured claims against the MBK bankruptcy estate or, if the Bankruptcy Case has been dismissed, *pro rata* to the Settling Homeowners.

15. Upon receipt of Settlement Payments (as defined in the GSA) in an amount at least sufficient to repay their home loans and otherwise as contemplated by the GSA, Settling Homeowners, with the exception of Settling Homeowners Richard Gibson and Susan D. Gibson (the "Gibsons"), will transfer title to their affected real property to the Receiver. The Gibsons have elected to receive a substantially reduced settlement payment pursuant to the GSA and will

be allowed to retain title to their Property. All other Settling Homeowners shall transfer their respective Property on the following terms:

a. The deed with which Settling Homeowners transfer real property under this Section shall be a Statutory Warranty Deed substantially in the form attached to this Consent Decree as Appendix C, which shall specifically exclude restrictions of record and all warranties as to environmental or hazardous substances issues and any encumbrance imposed by any health or environmental agency.

b. The Settling Homeowners shall pay all liens on and monetary encumbrances against their affected Properties, except that any assessments and/or improvement bonds shall be prorated between such Homeowner and the Receiver as of the Moving Date (as defined below), and such Homeowners shall bear responsibility for all tax consequences to themselves of such transfers; and except as to restrictions of record and all warranties as to environmental or hazardous substances issues and any encumbrance imposed by any health or environmental agency.

c. Such Homeowners shall vacate their affected Property on or before the later of (a) 120 days after the Payment Date (as defined in the GSA) or, (b) June 1, 2006; provided, however, that if an event arising from causes beyond the control of any Homeowner (a “force majeure” event), delays or prevents the ability of said Homeowner to move out by the date or dates specified above despite the Homeowner’s best efforts, which includes using best efforts to anticipate and minimize any such event, the affected Homeowner may, if United States Federal Magistrate Judge Thomas Coffin agrees that a force majeure has occurred, delay its move out for the time necessary to overcome the cause of the delay, which delay shall in no circumstances exceed 30 days.

Any Homeowner claiming a force majeure under this Paragraph must notify the Receiver, EPA and Judge Coffin within five (5) days after the Homeowner has become aware or reasonably should have become aware that a force majeure event has occurred. Failure to give such notice shall invalidate any claim of force majeure.

d. Unless otherwise agreed between the Receiver and any Homeowner remaining on their Property after the date specified in the immediately preceding Paragraph, such Homeowner shall pay rent to the Receiver in an amount not to exceed \$3,000.00 per month. For such time as they continue to reside at their respective Property after the Payment Date (as defined in the GSA), each Homeowner shall remain responsible for their own utilities charges, property taxes and insurance. During such time after the Payment Date as they reside at their property, such Homeowners shall allow the EPA and the Receiver and their respective agents and employees access to the properties. Not later than the date Settling Homeowners move from their property (the "Moving Date"), fully executed conveyance documents will be delivered to the Receiver in substantially the same form as attached hereto as Appendix C. As of the Moving Date, the Property, including but not limited to the house, landscaping, and any other structures or fixtures will be in substantially the same condition as they were when the GSA among the Settling Parties was executed, excepting only normal wear and tear, and excepting any hot tubs and other exterior personal property that may be removed without damaging the Property. Homeowners will be solely responsible for their own moving and relocation costs.

e. Record title and risk of damage or loss as to each Property will remain with the respective Settling Homeowner until the Moving Date, at which time they shall pass to the

Receiver. Property taxes shall be prorated between the Homeowner and the Receiver as of the Moving Date.

f. Within 30 days after entry of this Consent Decree, each Settling Homeowner will make best efforts to add the Receiver as an additional insured on their homeowners' insurance policies. The cost, if any, of naming such additional insured shall be at the sole expense of the respective Homeowner. Upon request, Homeowners will provide the Receiver with copies of their homeowners' insurance policies.

g. Those fees and closing costs which are customarily assumed by the seller in a real estate transaction in Klamath Falls, Oregon shall be assumed by the Settling Homeowners; fees and costs customarily assumed by a buyer will be assumed by the Receiver. In exchange for receiving a Statutory Warranty Deed in the form attached hereto as Appendix C, the Receiver will not require Homeowners to purchase or provide title insurance for their Properties.

16. Within 30 days of the entry of this Consent Decree, MBK shall transfer, or cause to be transferred, title to the Receiver of those properties within the Site identified on the diagram attached as Appendix D as belonging to MBK. Within thirty (30) days of the entry of this Consent Decree, the Stewarts, Bercot and Tuttle shall consummate their settlement agreements with respect to the properties marked "Holland" and "Lindell" on Appendix D such that those properties shall be transferred to the Receiver by the current owners. All such transfers shall be on the following terms:



a. The deed effecting the transfer real property under this Section shall be a Statutory Warranty Deed in substantially the form as attached to this Consent Decree as Appendix C.

b. All liens on and monetary encumbrances against the transferred properties shall be paid prior to transfer, except that property taxes and any assessments and/or improvement bonds shall be prorated between the transferor(s) and the Receiver as of the date of transfer of the property, and the transferor(s) shall bear responsibility for all tax consequences to itself of such transfers; and except as to restrictions of record and all warranties as to environmental or hazardous substances issues and any encumbrance imposed by any health or environmental agency.

c. Those fees and closing costs which are customarily assumed by the seller in a real estate transaction in Klamath Falls, Oregon shall be assumed by the transferor(s); fees and costs customarily assumed by a buyer will be assumed by the Receiver. In exchange for receiving a Statutory Warranty Deed in the form attached hereto as Exhibit C the Receiver will not require the transferor(s) to purchase or provide title insurance on any of the foregoing properties.

17. The Receiver shall submit written quarterly reports to EPA and the Court summarizing the Receiver's activities for the preceding quarter, beginning 90 days after entry of this Consent Decree. These quarterly reports shall be in a form to be agreed upon in writing between the Receiver and EPA not later than 60 days after entry of this Consent Decree.

18. If the Receiver determines that he is unable or unwilling to continue to act as Receiver, either due to a lack of resources to carry out his functions, or for any other reason in

the Receiver's sole and unreviewable discretion, he may resign upon 30 days written notice to EPA and the Court.

19. If the Receiver resigns, the United States shall nominate an alternate or move to terminate the receivership.

20. For good cause shown, the United States may move for removal or replacement of the Receiver.

## **VII. FAILURE TO COMPLY WITH CONSENT DECREE**

21. If any Settling Defendant(s) fail to cause any payment to be made under Section V (Payment of Response Costs) by the required due date, Settling Defendant(s) shall pay Interest on the unpaid balance. The Interest to be paid on the unpaid balance shall begin to accrue on the date on which payment is due and shall continue to accrue until the date on which payment of Interest, together with the unpaid balance and any stipulated penalties due, is made. Interest payable to EPA pursuant to this Paragraph shall be paid in the manner specified in Paragraph 5.

22. If any amounts due under Paragraph 4 are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 21, \$2,500 per day for each day that such payment is late. If MBK fails to comply with any of the requirements related to their transfer of title to Property as required by Paragraphs 15 and 16, it shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, \$500 per day, per violation. If any Settling Homeowner (except the Gibsons) fails to comply with the requirement to transfer title to Property, such Settling Homeowners shall, in addition to the rent and other costs as provided in

Paragraph 15(d), pay to EPA, as a stipulated penalty, \$250 per day, per violation, subject to the force majeure provisions and procedures set forth in Paragraph 15(c).

23. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site name, the EPA Region and Site Spill ID Number 10BT, DOJ Case Number 90-11-6-17135, and the civil action number. Settling Parties shall send the check (and any accompanying letter) to:

Mellon Bank  
EPA-Region 10 Superfund  
P.O. Box 371099M  
Pittsburgh, PA 15251

24. At the time of each payment, Settling Parties shall also send notice that payment has been made to EPA and DOJ in accordance with Section XV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 10BT, DOJ Case Number 90-11-6-17135, and the civil action number.

25. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing herein

shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

26. If the United States brings an action to enforce this Consent Decree, the Settling Party(ies) against whom such action is brought shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

27. Payments made under this Section shall be in addition to any other remedies or sanctions available to the United States by virtue of Settling Parties' failure to comply with the requirements of this Consent Decree.

28. The obligations of Settling Defendants to pay amounts owed the United States and the Receiver under this Consent Decree are joint and several. In the event of the failure of any one or more Settling Defendants to make the payments required under this Consent Decree, the remaining Settling Defendants shall be responsible for such payments.

29. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive as to one or more Settling Parties payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V, or Settling Defendants or Settling Homeowners from performance of any other requirements of this Consent Decree.

#### **VIII. COVENANTS BY THE UNITED STATES**

30. Except as specifically provided in Section IX (Reservation of Rights by the United States), the United States covenants not to sue or to take administrative action against Settling Defendants (except MBK) and the Receiver pursuant to Sections 106, 107(a), and 113(f)

of CERCLA, 42 U.S.C. §§ 9606, 9607(a), & 9613(f), for Matters Addressed. As to the Settling Defendants (except MBK), this covenant shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Response Costs) and any amount due under Section VI (Failure to Comply with Consent Decree). As to the Receiver, this covenant shall take effect upon entry of this Consent Decree. This covenant is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant extends only to Settling Defendants (except MBK) and the Receiver and does not extend to any other person. As to each Settling Defendant (except MBK), this covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by each Settling Defendant. If the Financial Information for a Settling Defendant is subsequently determined by EPA to be false or, in any material respect, inaccurate, that Settling Defendant shall forfeit all payments made pursuant to this Consent Decree, and this covenant not to sue and the contribution protection in Paragraph 31 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendant's false or materially inaccurate information.

31. Except as specifically provided in Section IX (Reservation of Rights by the United States), the United States covenants not to sue or to take administrative action against any Settling Homeowner or MBK pursuant to Sections 106, 107(a), and 113(f) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), & 9613(f), for Matters Addressed. This covenant shall take effect as to each Party upon receipt by EPA of such Settling Homeowners' or MBK's performance under Section VI (Receiver) and any amount due under Section VII (Failure to Comply with Consent Decree). This

covenant is conditioned upon the satisfactory performance by Settling Homeowners and MBK of their obligations under this Consent Decree. This covenant extends only to Settling Homeowners and to MBK and does not extend to any other person.

32. Except as specifically provided in Section IX (Reservation of Rights by United States), EPA covenants not to take administrative action against Settling Federal Agencies pursuant to Sections 106, 107(a), and 113(f) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), & 9613(f), for Matters Addressed, except for releases of hazardous substances other than asbestos or ACM. This covenant shall take effect upon receipt by EPA of all payments required by Paragraph 7 of Section V (Payment of Response Costs). This covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. This covenant extends only to Settling Federal Agencies and does not extend to any other person.

#### **IX. RESERVATIONS OF RIGHTS BY UNITED STATES**

33. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants and Settling Homeowners with respect to all matters not expressly included within the Covenants by the United States in Paragraphs 30 and 31 and the Covenant for Settling Federal Agencies by EPA in Paragraph 32. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants and Settling Homeowners, and this Consent Decree is without prejudice to, all rights against Settling Defendants, Settling Homeowners, Settling Federal Agencies and the Receiver, with respect to:

a. claims based on a failure of Settling Defendants, Settling Homeowners, or Settling Federal Agencies to meet a requirement of this Consent Decree;

- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability for violations of federal or state law which occur during or after implementation of the Remedial Action;
- d. any Settling Homeowner who elected not to sell their home pursuant to this settlement, liability for exacerbation of existing contamination at the Site caused by any activities of such Settling Homeowner at the Site;
- e. criminal liability;
- f. liability of Settling Federal Agencies for releases of hazardous substances other than asbestos at the Site; and
- g. liability of the Receiver for failure to discharge or the negligent discharge of his duties or obligations.

Notwithstanding any other provision of this Consent Decree, as to each Settling Defendant, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by a Settling Defendant, or the financial certification made by a Settling Defendant in Paragraph 49, is false or, in an material respect, inaccurate.

## **X. COVENANTS NOT TO SUE BY SETTLING DEFENDANTS AND SETTLING HOMEOWNERS**

34. Settling Defendants and Settling Homeowners covenant not to sue and agree not to assert any claims or causes of action against the United States, the United States' contractors or employees, or the Receiver, with respect to the Site, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at the Site for which the Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Oregon, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States or the Receiver pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, or any other theory of recovery or provision of law relating to the Site.

d. *provided, however*, that notwithstanding the foregoing covenants or any other provision of this Consent Decree, nothing herein shall waive or release any Settling Homeowner's claims for death, illness or personal injuries of any sort (including but not limited to mesothelioma, primary lung cancer, pleural plaques, benign pleural effusion, asbestosis, gastrointestinal cancers and or other asbestos-related illnesses) resulting from exposure to asbestos or asbestos-containing-materials to the extent those claims may be made to or against a trust fund or claims facility (an "Injury Fund") created to, intended to, or acting to compensate individuals for



such death, injuries or illnesses. This exception is to be broadly interpreted, so that while the Homeowners do settle, waive, and release such claims (for themselves but not for their children) against the other Parties, they do not hereby settle, waive, or release them against any Injury Fund, whether that Injury Fund is created by legislation, a court, or one or more private parties; however it is funded or administered; whether it is now in existence or is enacted or created in the future; and whether it is public or private;

35. Settling Defendants and Settling Homeowners mutually covenant not to sue and agree not to assert any claims or causes of action against each other with respect to the Site pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, except as such rights are retained pursuant to Paragraph 19 of the GSA and amendments thereto.

36. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

37. Settling Defendants and Settling Homeowners agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants and Settling Homeowners with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

38. The waiver in Paragraph 37 shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant or Settling Homeowner may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Defendant or Settling Homeowner, or to any Settling Homeowner's claim against an Injury Fund. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

#### **XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

39. Except as provided in Paragraph 37 (Non-Exempt De Micromis Waiver), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 37 (Non-Exempt De Micromis Waiver), the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with

respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

40. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants, Settling Homeowners, Settling Federal Agencies, and the Receiver are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for all Matters Addressed in this Consent Decree.

41. Each Settling Defendant and Settling Homeowner agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant and Settling Homeowner also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

42. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant or Settling Homeowners shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided,

however, that nothing in this Paragraph affects the enforceability of the Covenants by the United States set forth in Section VIII.

## **XII. SITE ACCESS**

43. If the Site, or any other property where access is needed to implement response activities at the Site, is owned or controlled by any of the Settling Defendants or Settling Homeowners, such Settling Defendants or Settling Homeowners shall, commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and contractors, with access at all reasonable times to the Site, or to such other property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

- a. Monitoring, investigation, removal, remedial or other activities at the Site;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants, Settling Homeowners or their agents, consistent with Section XIII (Access to Information); and
- g. Assessing compliance with this Agreement.

44. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including

enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

### **XIII. ACCESS TO INFORMATION**

45. Settling Defendants and Settling Homeowners shall provide to EPA upon request, copies of all records, reports, or information (hereinafter referred to as "Records" within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

46. Settling Defendants may assert business confidentiality claims covering part or all of the Records submitted to the United States under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA or if EPA has notified Settling Defendants that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Defendants.

a. Settling Defendants or Settling Homeowners may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If any Settling Party asserts such a privilege in lieu of providing Records, they shall provide the United States with the following: 1) the title of the Record; 2) the date of the Record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the Record; 4) the name and

title of each addressee and recipient; 5) a description of the subject of the Record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged information only. Settling Parties shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Parties' favor. However, no Records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

b. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

#### **XIV. RETENTION OF RECORDS**

47. Until (10) years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records, reports, or information now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

48. After the conclusion of the ten-year document retention period in the preceding Paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the

attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide the United States with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to the United States in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

49. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927; and

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially

changed between the time the Financial Information was submitted to EPA and the time Settling Defendant executes this Consent Decree.

50. Each Settling Defendant acknowledges that the United States, in entering into this Consent Decree, is relying on the accuracy and completeness of the submitted Financial Information.

51. The United States acknowledges that each Settling Federal Agency 1) is subject to all applicable Federal record retention laws, regulations, and policies; and 2) has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

## **XV. NOTICES AND SUBMISSIONS**

52. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, the Settling Federal Agencies, Settling Defendants and Settling Homeowners, and the Receiver, respectively.

*As to EPA:*

Alan Goodman  
U.S. EPA Region X  
Oregon Operations Office  
811 SW Sixth Avenue, 3d Floor  
Portland, OR 97204



Clifford J. Villa  
Office of Regional Counsel, ORC-158  
U.S. EPA, Region X  
1200 Sixth Avenue  
Seattle, WA 98101

*As to DOJ:*

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-6-17135)  
P.O. Box 7611  
Washington, D.C. 20044-7611

Chief, Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-6-17135)  
P.O. Box 23986  
Washington, D.C. 20026-3986

*As to Settling Defendants:*

George W. McKallip, Jr.  
Sussman Shank LLP  
1000 SW Broadway, Suite 1400  
Portland, OR 97205-3089

Kathryn P. Salyer  
Peter C. McKittrick  
FARLEIGH WADA & WITT PC  
121 SW Morrison, Suite 600  
Portland, OR 97204

Jeffrey W. Hansen  
Smith Freed & Eberhard, P.C.  
1001 S.W. Fifth Ave.  
17<sup>th</sup> Floor  
Portland, OR 97204

Christopher W. Rich  
Rycewicz & Chenoweth, LLP  
601 SW Second Avenue, Suite 1940  
Portland, Oregon 97204

Robert C. Goodman  
Law Offices of Robert C. Goodman  
177 Post Street, Suite 750  
San Francisco, CA 94108

*As to Settling Homeowners:*

2726	Klamath Falls, OR 97601
Mike and Harriet Cornachione	Dave and Karen Selim
1-2726	Klamath Falls, OR 97601-9393
-2726	
726	Vacaville, CA 95688
	Neil and Jenny Walle
Klamath Falls, OR 97601-9383	
Kil Nam Lee	Dennis and Carolyn Winn

4

Richard S. Gleason  
Stoel Rives LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, Oregon 97204

*As to the Receiver:*

Daniel J. Silver  
606 Columbia Street, Suite 212  
Olympia, WA 98501

## **XVI. RETENTION OF JURISDICTION**

53. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

## **XVII. INTEGRATION/APPENDICES**

54. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree; *provided however*, that as between the Settling Defendants and the Settling Homeowners, the terms of the GSA remain in full force and effect and are not modified, rescinded, waived or amended in any way by this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: Appendix A is a Legal Description of the Site. Appendix B identifies the Financial Information submitted by Bercot, by Melvin L. Stewart and M.L. Stewart, and by Tuttle to the United States pursuant to the Stipulation and Order Protecting Confidential Business and Financial Information, signed by the United States and others, entered by the Court on April 13, 2005, which remains in effect. Appendix C is the form of the Statutory Warranty Deed to be used for real property transfers to the Receiver; and Appendix D is a diagram of the Properties as referred to in Paragraph 16.

## **XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

55. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold

its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants, Settling Homeowners and the Receiver consent to the entry of this Consent Decree without further notice.

56. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

### **XIX. SIGNATORIES/SERVICE**

57. Each undersigned representative of a Settling Defendant or Settling Homeowner to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

58. Each Settling Defendant and Settling Homeowner hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants and Settling Homeowners in writing that it no longer supports entry of the Consent Decree.

59. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local

rules of this Court. Settling Homeowners hereby agree to accept service by mail and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.

## **XX. FINAL JUDGMENT**

60. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, Settling Defendants and Settling Homeowners. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 200\_ .

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United States District Judge

FOR THE UNITED STATES OF AMERICA

Date: 11/15/05

Kelly A. Johnson  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Date: 11-17-05

Sean K. Carman  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
c/o NOAA/Damage Assessment  
7600 Sand Point Way, NE  
Seattle, WA 98115  
(206) 526-6617

Date: 11/17/2005

Michael J. Zevenbergen  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
c/o NOAA/Damage Assessment  
7600 Sand Point Way, NE  
Seattle, WA 98115  
(206) 526-6607

Date:

11/17/05

Daniel D. Opalski, Director  
Office of Environmental Cleanup, Region X  
U.S. Environmental Protection Agency  
1200 Sixth Avenue  
Seattle, WA 98101

FOR THE RECEIVER

Date: November 17, 2005

Daniel J. Silver  
606 Columbia Street, Suite 212  
Olympia, WA 98501



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-HO, relating to the North Ridge Estates Site.

MARY LOU STEWART

Date: 11-17-05

Mary Lou Stewart, individually

Klamath Falls, OR 97603

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Jeffrey W. Hansen  
Smith Freed & Eberhard, P.C.  
1001 SW 5<sup>th</sup> Avenue, Suite 1700  
Portland, OR 97204

MELVIN L. STEWART

Date: 11-17-05

Melvin L. Stewart, individually

Klamath Falls, OR 97603

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Jeffrey W. Hansen  
Smith Freed & Eberhard, P.C.  
1001 SW 5<sup>th</sup> Avenue, Suite 1700  
Portland, OR 97204

CONSENT DECREE

M.L. STEWART, INC.

Date: 11-17-05

By Melvin L. Stewart, President

Klamath Falls, OR 97603

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Jeffrey W. Hansen  
Smith Freed & Eberhard, P.C.  
1001 SW 5<sup>th</sup> Avenue, Suite 1700  
Portland, OR 97204

MBK PARTNERSHIP, DEBTOR  
AND DEBTOR IN POSSESSION

Date: 11-17-05

by Melvin L. Stewart, Partner

Klamath Falls, OR 97603

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Jeffrey W. Hansen  
Smith Freed & Eberhard, P.C.  
1001 SW 5<sup>th</sup> Avenue, Suite 1700  
Portland, OR 97204

CONSENT DECREE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-H0, relating to the North Ridge Estates Site.

FOR SETTLING DEFENDANT

Date: 11-17-05

Kenneth L. Tuttle, Individually; *Kenneth L. Tuttle*  
Kenneth L. Tuttle, M.D., P.C., President  
Kenneth L. Tuttle as Trustee for the  
Kenneth L. Tuttle, M.D., P.C. Employee  
Profit Sharing Plan and Trust  
Kenneth L. Tuttle, M.D., P.C. Employee  
Profit Sharing Plan and Trust as an  
MBK Partner --

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:

Title:

Address:

*Attorney*  
*Sussman Shank LLP*  
*1000 SW Broadway*  
*Suite 1400*  
*Portland OR 97205*

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-H0, relating to the North Ridge Estates Site.

FOR SETTLING DEFENDANT

Date: 11-18-05

Maurice E. Bercot

Klamath Falls, Oregon 97603

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Chris Rich or Chris Rycewicz

Title: Attorneys for Marice E. Bercot

Address: Rycewicz & Chenoweth, LLP  
601 SW 2<sup>nd</sup> Avenue, Suite 1940  
Portland, Oregon 97204  
(503) 221-7958

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-302010-HO, relating to the North Ridge Estates Site.

Lisa M. Stewart

Date: 11-18-05

\_\_\_\_\_  
Lisa M. Stewart

Klamath Falls, OR 97603

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Barbara M. DiIaconi  
Boivin, Uerlings & DiIaconi, P.C.  
803 Main Street - Suite 201  
Klamath Falls, OR 97601-6070

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-H0, relating to the North Ridge Estates Site.

FOR SETTLING HOMEOWNER

Date: 11-16-05

\_\_\_\_\_  
[Names and address of signatory]

Date: 11-16-05

\_\_\_\_\_  
[Names and address of signatory]

Agent Authorized to Accept Service on Behalf of Above-signed Party(s):

Name:

Title:

Address:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-H0, relating to the North Ridge Estates Site.

FOR SETTLING HOMEOWNER

Date: 11/16/05

[Names and address of signatory]

Michael A. Cornachione Kalamazoo Falls, OR.

Date: 11/16/05

[Names and address of signatory]

Michael S. Cornachione Kalamazoo Falls, OR.

Agent Authorized to Accept Service on Behalf of Above-signed Party(s):

Name:

Title:

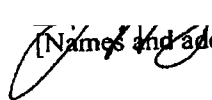
Address:

CONSENT DECREE - 41

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-H0, relating to the North Ridge Estates Site.

FOR SETTLING HOMEOWNER

Date: 11-17-05

 [Names and address of signatory] Jeffrey H. Devish  
Klamath Falls, OR 97601

Date: 11/17/05

Staci M. Devish  
[Names and address of signatory] Staci M. Devish  
Klamath Falls, OR 97601

Agent Authorized to Accept Service on Behalf of Above-signed Party(s):

Name:

Title:

Address:



THE UNDERSIGNED PARTY enters into this Consent Decree in ~~the State of Oregon~~  
United States, No. 03-30210-H0, relating to the North Ridge Estate

FOR SETTLING HOMEOWNER

Date: 11/16/05

[Names and address of signatory] RICHARD GIBSON  
KLAMATH FALLS, OR 97601

Date: 11/16/05

[Names and address of signatory] SUSAN D. GIBSON  
Klamath Falls, OR 97601

Agent Authorized to Accept Service on Behalf of Above-signed Party(s):

Name:

Title:

Address:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-H0, relating to the North Ridge Estates Site.

FOR SETTLING HOMEOWNER

Date: 11-16-05

\_\_\_\_\_  
[Names and address of signatory]

Klamath Falls NE. 97601

Date: 11-16-05

\_\_\_\_\_  
[Names and address of signatory]

sm feldt

Agent Authorized to Accept Service on Behalf of Above-signed Party(s):

Name:

Title:

Address:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-H0, relating to the North Ridge Estates Site.

FOR SETTLING HOMEOWNER

Date: 11/17/05

\_\_\_\_\_  
[Names and address of signatory]

KIAMATH FALLS, OR 97601  
KIL NAM LEE

Date: 11/17/05

\_\_\_\_\_  
[Names and address of signatory]

KIAMATH FALLS, OR 97601  
KIL NAM LEE

Agent Authorized to Accept Service on Behalf of Above-signed Party(s):

Name:

Title:

Address:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-H0, relating to the North Ridge Estates Site.

FOR SETTLING HOMEOWNER

Date: 11/17/05

~~[Names and address of signatory]~~

Angelina A. Mingu

Date: 11/17/05

~~15100 NW 11th St. OR 97001~~

~~[Names and address of signatory]~~

Agent Authorized to Accept Service on Behalf of Above-signed Party(s): 15100 NW 11th St. OR 97001

Name:

Title:

Address:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-H0, relating to the North Ridge Estates Site.

## FOR SETTLING HOMEOWNER

Date: 11/16/05

[Names and address of signatory]

JAMES DAVID SELIM

Date: 11/16/05

[Names and address of signatory]

Agent Authorized to Accept Service on Behalf

Above-signed Party(s):

Name:

SAMATH FAHES, OR 97601

Title:

Address:

CONSENT DECREE - 41

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-HO, relating to the North Ridge Estates Site.

FOR SETTLING HOMEOWNER

Date: 11/16/05

[Names and address of signatory]

\_\_\_\_\_  
Klamath Falls, OR  
97601

Date: \_\_\_\_\_

\_\_\_\_\_  
[Names and address of signatory]

Agent Authorized to Accept Service on Behalf of Above-signed Party(s):

Name:

Title:

Address:

CONSENT DECREE - 41

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-H0, relating to the North Ridge Estates Site.

FOR SETTLING HOMEOWNER

Date: 11/16/05

[Names and address of signatory] Klamath Falls, OR  
97601

Date: \_\_\_\_\_

[Names and address of signatory]

Agent Authorized to Accept Service on Behalf of Above-signed Party(s):

Name:

Title:

Address:

CONSENT DECREE - 41

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-H0, relating to the North Ridge Estates Site.

FOR SETTLING HOMEOWNER

Date: 11/16/05

\_\_\_\_\_  
[Names and address of signatory]

Date: 11/16/05

\_\_\_\_\_  
[Names and address of signatory]

Agent Authorized to Accept Service on Behalf of Above-signed Party(s):

Name:

Title:

Address:



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-H0, relating to the North Ridge Estates Site.

FOR SETTLING HOMEOWNER

Date: 11-16-05

Klamath Falls Or. 97601

[Names and address of signatory]

Date: 11-16-05

Klamath Falls, OR 97601

[Names and address of signatory]

Agent Authorized to Accept Service on Behalf of Above-signed Party(s):

Name:

Title:

Address:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-H0, relating to the North Ridge Estates Site.

FOR SETTLING HOMEOWNER

Date: 11.16.05

[Names and address of signatory]

JENNY WALL

1 R 47601

Date: \_\_\_\_\_

[Names and address of signatory]

Agent Authorized to Accept Service on Behalf of Above-signed Party(s):

Name:

Title:

Address:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-H0, relating to the North Ridge Estates Site.

FOR SETTLING HOMEOWNER

Date: 11/17/05

\_\_\_\_\_  
[Names and address of signatory]

KUMATH HILLS, OR 97601

Date: \_\_\_\_\_

\_\_\_\_\_  
[Names and address of signatory]

Agent Authorized to Accept Service on Behalf of Above-signed Party(s):

Name:

Title:

Address:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-H0, relating to the North Ridge Estates Site.

  
FOR SETTLING HOMEOWNER

Date: 11/16/05

KLAMATH FALLS, OR. 97601  
[Names and address of signatory]

Date: 11/16/05

\_\_\_\_\_  
[Names and address of signatory]

KDMPTT FALLS, OR. 97601  
Agent Authorized to Accept Service on Behalf of Above-signed Party(s):

Name:

Title:

Address:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-H0, relating to the North Ridge Estates Site.

FOR SETTLING HOMEOWNER

Date: 11/17/05

( [Names and address of signatory] ? Rd  
Klamath Falls, OR  
97601

Date: 11/17/05

( [Names and address of signatory] 97601 Klamath Falls OR

Agent Authorized to Accept Service on Behalf of Above-signed Party(s):

Name: Richard S. Gleason  
Title: Attorney  
Stoel Rives, LLP  
Address: 900 SW 5<sup>th</sup> Ave., Ste 2600  
Portland, Oregon 97204

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-H0, relating to the North Ridge Estates Site.

FOR SETTLING HOMEOWNER

Date: 5/17/05

[Names and address of signatory]

Date: 5/17/05

[Names and address of signatory]

Agent Authorized to Accept Service on Behalf of Above-signed Party(s):

11 Falls, OR 971403

Name: Richard S. Gleason  
Attorney  
Title: Steel Rives, LLP  
900 SW 5<sup>th</sup> Ave., Ste 2600  
Address: Portland, Oregon 97204

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-H0, relating to the North Ridge Estates Site.

FOR SETTLING HOMEOWNER

Date: 11/17/05

\_\_\_\_\_  
[Names and address of signatory]

Klamath Falls, OR  
97601

Date: 11/17/05

\_\_\_\_\_  
[Names and address of signatory]

Agent Authorized to Accept Service on Behalf of Above-signed Party(s):

Name: Richard S. Gleason  
Title: Attorney  
Stoel Rives, LLP  
Address: 900 SW 5<sup>th</sup> Ave., Ste 2600  
Portland, Oregon 97204

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States No. 03-30210-110, relating to the North Ridge Estates Site.

FOR SETTLING HOMEOWNER

Date: 11-18-05

[Names and address of signatory]

Date: 11-18-05

[Names and address of signatory]

Agent Authorized to Accept Service on Behalf of Above-signed Party(s): KLAMATH FALLS, OR 97601

Name: Richard S. Gleason  
Title: Attorney  
Stoel Rives, LLP  
Address: 900 SW 5<sup>th</sup> Ave., Ste 2600  
Portland, Oregon 97204



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Burns v. MBK v. United States, No. 03-30210-110, relating to the North Ridge Estates Site.

FOR SETTLING HOMEOWNER

Date: 11-18-05

\_\_\_\_\_  
[Name and address of signatory]

Date: 11/18/05

\_\_\_\_\_  
[Name and address of signatory]

Agent Authorized to Accept Service on Behalf of Above-signed Party(s):

Name: Richard S. Gleason  
Title: Attorney  
Stoel Rives, LLP  
Address: 900 SW 5<sup>th</sup> Ave., Ste 2600  
Portland, Oregon 97204

## **Appendix A**

## EXHIBIT

### LEGAL DESCRIPTION OF "THE SITE"

#### Legal Description of the "Marine Recuperational Barracks" Property

That real property located in Klamath County, Oregon described as:

- Parcel 1 - S 1/2 NE 1/4, NE 1/4 SE 1/4, SE 1/4 NW 1/4,  
Sec. 15, T.38 S., R 9 E. W.M.
- " 2 - N 1/2 NW 1/4, Sec. 15, T.38 S., R.9E. W.M.
- " 4 - SW 1/4 NW 1/4, Sec. 15, T.38 S., R.9 E. W.M.
- " 5 - NE 1/4, SW 1/4, W 1/2 SE 1/4, Sec. 15, T.38 S.,  
R.9 E. W.M.
- " 6 - SE 1/4 NW 1/4, SW 1/4, Sec. 14, T.38 S., R.9 E.,  
W.M.
- " 7 - SW 1/4 NW 1/4, Sec. 14, T.38 S., R.9 E., W.M.
- " 9 - SE 1/4 SW 1/4, Sec. 15, T.38 S., R. 9 E., W.M.
- " 10 - NW 1/4 SW 1/4, Sec. 15, T.38 S., R. 9 E., W.M.
- " 12 - The S. 465.44' of the NW 1/4 NE 1/4, Sec. 15,  
T.38 S., R 9 E., W.M.

Together with a perpetual easement for sewer and power  
lines over 10.8 acres of land described as follows:

That portion of Sections 28, 27, and 22 of Township 38 S,  
Range 9 East, Willamette Meridian, in Klamath County,  
Oregon, lying within a strip of land 50 feet in width,  
the center line of which is described as follows:

Beginning at a point, same being on the half section line  
and 113.13 feet west of the S.W. Corner of the NW 1/4 of  
Section 28 N. 48° 45' East, a distance of 366.84 feet to  
a point; thence North 38° 15' East a distance of 494.7 feet  
to a point lying in Section 27; thence North 29° 29' East  
a distance of 2196.5 feet; thence North 31° 28' East a  
distance of 481 feet to a point; thence North 8° 34' East a  
distance of 256 feet to a point; thence North 13° 45' East  
a distance of 242 feet to a point; thence North 46° 42'  
East a distance of 850 feet to a point; thence North 36° 56'  
East a distance of 189.6 feet to a point; thence North 44°  
21' East a distance of 1408.9 feet to a point; thence North  
31° 36' East a distance of 260 feet to a point; thence North  
22° 58' East a distance of 730 feet to a point; thence  
North 20° 43' East a distance of 345 feet to a point; thence  
North 3° 57' West a distance of 595 feet to a point; thence  
North 27° 05' West a distance of 530 feet to a point;  
thence North 23° 25' West a distance of 330 feet to a point;  
thence North 15° 20' East a distance of 131.3 feet, same  
being on Section line between Sections 15 and 22.

Containing 10.8 acres, more or less.

## Legal Description of the "Rifle Range" Property

That real property located in Klamath County, Oregon described as:

### PARCEL 1:

A tract of real property situated in the SE1/4 SE1/4 and the NE1/4 SE1/4 of Section 15 and in the NW1/4 SW1/4, SW1/4 SW1/4 and the SE1/4 SW1/4 of Section 14 all in Township 38 South, Range 9 East of the Willamette Base and Meridian, in the County of Klamath, State of Oregon, and being more particularly described as follows:

Beginning at the section corner common to Sections 14, 15, 22 & 23, Township 38 South, Range 9 East of the Willamette Base and Meridian; thence North  $0^{\circ} 38' 06''$  West along the boundary common to aforesaid Sections 14 and 15, a distance of 792.02 feet; thence North  $42^{\circ} 22'$  West, 256.73 feet; thence North  $28^{\circ} 40' 30''$  West, 207.87 feet; thence North  $61^{\circ} 15'$  West, 237.60 feet; thence North  $34^{\circ} 35' 30''$  East, 615.18 feet; thence North  $47^{\circ} 51' 17''$  East, 130.78 feet; thence South  $46^{\circ} 36' 44''$  East, 2097.90 feet; thence South  $0^{\circ} 48' 40''$  East, a distance of 411.75 feet to the South boundary of aforesaid Section 14; thence South  $89^{\circ} 14' 34''$  West along said boundary, a distance of 1486.99 feet, more or less, to the point of beginning containing 44.46 acres, more or less.

### PARCEL 2:

Together with an easement for the right and privilege of constructing, using and maintaining a roadway for ingress and egress to Parcel 1 described above, on and across a part of the NE1/4 SE1/4 of Section 15, Township 38 South, Range 9 East of the Willamette Base and Meridian, in the County of Klamath, State of Oregon, said roadway not to exceed 40.0 feet in width, lying 20.0 feet on each side of the following described centerline.

Beginning at the Southeast corner of Section 15, Township 38 South, Range 9 East of the Willamette Base and Meridian; thence North  $89^{\circ} 57' 09''$  West, along the South boundary of said Section 15 a distance of 1552.84 feet to the centerline of the Old Fort Road as now located and constructed; thence following the aforesaid centerline Northward on the following courses; (1) along the arc of a  $7.007^{\circ}$  curve to the right a distance of 428.15 feet; (2) along the arc of a  $3.997^{\circ}$  curve to the left a distance of 353.98 feet; (3) North  $21^{\circ} 35'$  East 210.76 feet; (4) along the arc of a  $10.00^{\circ}$  curve to the left a distance of 397.83 feet; and North  $18^{\circ} 12'$  West a distance of 485.01 feet to the centerline of an existing road intersection from the Northeast, and being the true point of beginning of this description; thence leaving the Old Fort Road and following the centerline of said intersecting road on the following courses; (1) along the arc of a  $41.00^{\circ}$  curve to the right a distance of 97.15 feet; (2) North  $21^{\circ} 38'$  East 517.04 feet; (3) along the arc of a  $29.00^{\circ}$  curve to the right a distance of 440.59 feet; (4) South  $30^{\circ} 36'$  East 106.86 feet; (5) along the arc of a  $13.00^{\circ}$  curve to the left a distance of 406.28 feet; (6) South  $83^{\circ} 25'$  East 82.39 feet and (7) along the arc of a  $30.00^{\circ}$  curve to the right a distance of 393.39 feet, more or less to the boundary of Parcel No. 1 aforesaid, containing 1.88 acres more or less.

## Appendix B – Financial Information

This Appendix lists the financial information submitted by certain Settling Defendants to the United States. The financial information submitted by each submitting Settling Defendant is identified below:

### Tuttle:

The financial information submitted to the United States by Tuttle consists of the documents delivered under cover letter dated April 22, 2005, with Bates numbers KLT 0001 through KLT 00315. Those submitted documents include, but may not be limited to, the following:

1. Signed Department of Justice Financial Statement of Debtor Form and attached schedules of real and personal property (complete statement of assets).
2. Bankruptcy schedules prepared for the United States Bankruptcy Court for the District of Oregon.
3. Federal and state income tax returns (2001 - 2004) of Kenneth Tuttle, M.D., and Kenneth Tuttle M.D., P.C.
4. Federal and state income tax returns (2003 and 2004) of BBGT, Inc., Double K Ranch, and Campus Development Co.
5. Federal income tax returns (2003 and 2004) for Lakeside Farms, Inc.
6. Identification of all insurance policies held.

### Melvin Stewart and M.L. Stewart, Inc.:

The financial information submitted to the United States by Melvin Stewart and M.L. Stewart, Inc., consists of the documents delivered under cover letter dated April 26, 2005. Those submitted documents include, but may not be limited to, the following:

1. Signed Department of Justice Financial Statement of Debtor Form and attached schedules of real and personal property (complete statement of assets).
2. Identification of all real property, and respective fair market values, owned by Melvin Stewart.
3. Federal and state income tax returns (2000 - 2004) for Melvin and Mary Lou Stewart.
4. Federal and state income tax returns (2000 -- 2003) for M.L. Stewart, Inc., Mel Stewart

Homes, Inc., and Stewart Bogatay Joint Venture, Inc.

5. Federal and state income tax returns (2002 and 2003) for Glenridge Place, LLC, Westwind Village, LLC, Westgo Co. Partnership, Foothills Pinnacle, LLC, and Shasta View Alpaca Ranch
6. Federal and state income tax returns (2000 - 2003) for KKTCS Partnership.

MBK:

1. Bankruptcy schedules and notices filed with the United States Bankruptcy Court for the District of Oregon.
2. Federal and state income tax returns (2000 - 2004) of MBK Partnership.
3. Comprehensive Financial Statement of MBK Partners (April 21, 2005).

Bercot:

The financial information submitted to the United States by Bercot consists of the documents delivered under cover letters dated April 19, 2005 and April 22, 2005. Those submitted documents include, but may not be limited to, the following:

1. Signed Department of Justice Financial Statement of Debtor Form and attached schedules of real and personal property (complete statement of assets).
2. Identification of all real property, respective assessed values, and taxes paid for properties owned by Bercot.
3. Balance sheets (2000 - 2004) for the Townhouse Motel, Klamath Falls, Oregon.
4. Federal and state income tax returns (2002 and 2003) for Maurice and Mildred Bercot.

## **Appendix C**

### **Form of Deed for Conveyance of Homeowner Properties**

**After recording return to:**

Perkins Coie LLP  
1120 NW Couch St, 10th Floor  
Portland, OR 97209  
Attn: Tom Lindley

**This space reserved for recorder's use.**

**Until a change is requested, all tax statements shall be sent to Grantee at the following address:**

**GRANTOR:**

**GRANTEE:**

---

### **STATUTORY WARRANTY DEED**

\_\_\_\_\_  
("Grantor") conveys and specially warrants to \_\_\_\_\_ ("Grantee") the real property in Klamath County, Oregon, more particularly described on Exhibit C-1 attached hereto and by this reference incorporated herein, free of encumbrances except for those encumbrances set forth on Exhibit C-2, attached hereto and by this reference incorporated herein.

Grantee has not relied on any statements or representations from Grantor or any person acting on behalf of Grantor concerning the condition of the Property, including but not limited to, environmental condition above or below the surface of the Property or compliance with environmental laws and other governmental requirements or any other matter affecting or relating to the Property or any portion thereof. Grantee is acquiring the Property in the condition existing at the time of conveyance, AS IS, with all defects, if any. Grantee waives, releases and forever discharges Grantor of and from all claims, actions, causes of action, fines, penalties, damages (including consequential, incidental and special damages), costs (including

the cost of complying with any judicial or governmental order), and expenses (including attorney fees), direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way growing out of or in connection with any physical characteristic or condition of the Property, including any surface or subsurface condition, or any law, rule or regulation applicable to the Property. These provisions shall be binding on the Grantee and Grantee's successors and assigns.

The true consideration for this conveyance in terms of dollars is \$\_\_\_\_\_.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

DATED: \_\_\_\_\_.

[Insert Grantor Name]

\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_)

) ss.

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of  
\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:\_\_\_\_\_



## **EXHIBIT C-1**

### **Legal Description**

## **EXHIBIT C-2**

### **Permitted Encumbrances**

All restrictions of record and any encumbrance, whether or not of record as of the date of conveyance of this Statutory Warranty Deed, imposed by a federal, state, or local health or environmental agency with respect to hazardous substances, including asbestos, located on the real property described in Exhibit A, herein.

## **Appendix D**

